

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 10.7.106A, 10.10.301,	)	PROPOSED AMENDMENT
10.10.301B, 10.10.301D, 10.10.320,	)	
10.10.611, 10.10.613, 10.15.101,	)	
10.20.102, 10.20.106, 10.21.101C,	)	
and 10.30.405 pertaining to school	)	
finance	)	

TO: All Concerned Persons

1. On August 24, 2010, at 10:30 a.m., the Superintendent of Public Instruction will hold a public hearing in the Superintendent's Conference Room, at 1227 11th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Office of Public Instruction (OPI) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the OPI no later than 5:00 p.m. on August 13, 2010 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

10.7.106A TRANSPORTATION COSTS ALLOCATED BY OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) through (8) remain the same.

(9) In accordance with 20-5-324, MCA and ARM 10.10.301B, the school district trustees ~~or county superintendent~~ may pay costs of transportation listed on an attendance agreement along with tuition due on that contract in the year of the student's attendance or, if the obligation occurs after the district's budget is adopted, in the ensuing year. Parents or guardians may be charged in the year of attendance.

AUTH: 20-10-112, MCA

IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-10-141, 20-10-142, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.106A to remove the county superintendent as a party responsible for paying costs of transportation listed on an attendance agreement. Pursuant to 20-5-324(2), MCA, the state is now responsible for paying these costs and the process is in ARM 10.10.301B(8).

10.10.301 CALCULATING TUITION RATES (1) through (5)(c) remain the same.

(d) Tuition amounts shall be adjusted for the portion of the year the student is enrolled, based on the percentage calculated by dividing the number of days the student is enrolled by ~~480~~ the number of pupil instruction days scheduled by the school district in the year of attendance.

(e) remains the same.

AUTH: 20-5-312, 20-9-102, 20-9-201, MCA

IMP: Title 20, ch. 5, pt. 3, 20-6-702, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.301 to clarify the portion of the year a student is enrolled is based on the number of pupil instruction days scheduled by the district in the year of attendance. If a school district meets the minimum aggregate hour requirements in 20-1-301, MCA, the number of pupil instruction days could be less than 180 days.

10.10.301B OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) through (10) remain the same.

(11) The state's tuition and related transportation obligation shall be paid to the eligible receiving district by the Superintendent of Public Instruction in the year following the year of attendance.

(12) remains the same.

AUTH: 20-5-323, 20-9-102, MCA

IMP: 20-5-320, 20-5-321, 20-5-322, 20-5-323, 20-5-324, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.301B to clarify when the state pays tuition and related transportation reimbursements to eligible school districts as provided in 20-5-324, MCA.

10.10.301D TUITION REPORTS (1) remains the same.

(a) ~~students who attended a school of the district under a mandatory agreement pursuant to 20-5-321, MCA;~~

(b) resident students who attended a public school out-of-state for which the district is responsible for payment of the tuition charges; and

(c) remains the same but is renumbered (b).

(2) For each student attendance agreement approved under ARM 10.10.301(b)(8), the trustees of a district shall electronically submit to the Superintendent of Public Instruction the number of days the student was enrolled in the district for the year of attendance.

~~(2)~~ (3) To be eligible to receive state payments for tuition and tuition reimbursements under 20-5-324, MCA, a district must submit the tuition report in (1) and the electronic data in (2) to the Superintendent of Public Instruction by June 30 of the year following the student's year of attendance.

AUTH: 20-5-323, 20-9-102, MCA

IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-7-431, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.301D to reflect changes in processes resulting from the OPI's implementation of an electronic reporting system for state paid tuition. This amendment clarifies the information to be submitted on the paper report and the information that must be submitted electronically.

10.10.320 CASH AND BUDGET TRANSFERS BETWEEN SCHOOL DISTRICT FUNDS (1) through (2)(f) remain the same.

(g) transfers of any portion of the balance of a bus depreciation fund approved by the voters as provided in (4); ~~and~~

(h) transfers of unused tuition receipts from the miscellaneous programs fund to the general fund as provided in ARM 10.10.310-; and

(i) transfers of excess funds in the lease or rental agreement fund to the general fund as required in 20-9-509, MCA.

(3) through (11) remain the same.

AUTH: 20-9-102, 20-10-112, MCA

IMP: 20-9-208, 20-9-439, 20-9-443, 20-9-509, 20-9-512, 20-9-515, 20-9-703, 20-10-147, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.320 to clarify that transfers required in 20-9-509, MCA are not subject to the public hearing process. This change mirrors current policy for other year-end transfers to the general fund as seen in 20-9-512, MCA (compensated absences fund) and 20-9-515, MCA (litigation reserve fund).

10.10.611 ESTABLISHMENT OF INVESTMENT ACCOUNTS (1) In accordance with 20-9-235, MCA, a school district may set up school district investment accounts for any fund or funds of the district, except the debt service fund. A full service education cooperative established under 20-7-451, MCA, and which receives state special education allowable cost payments and quality educator payments directly from the Superintendent of Public Instruction under 20-7-457 and 20-9-327, MCA, may set up investment accounts for any fund or funds of the cooperative in accordance with 20-9-235, MCA.

(2) through (4) remain the same.

AUTH: 20-9-102, 20-9-235, MCA

IMP: 20-9-235, 20-9-327, 20-9-440, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.10.611 to clarify that state payments made to a school district's debt service fund may not be deposited to a school district investment account as provided in 20-9-235(5), MCA and, pursuant to 20-9-440, MCA, the county treasurer must pay a school district's debt service obligations from

a separate debt service fund maintained at the county level. The rule is also being amended to clarify that quality educator payments to special education cooperatives under 20-9-327, MCA may be paid to an investment account established by the cooperative.

10.10.613 AGREEMENT WITH THE COUNTY TREASURER (1) through (4) remain the same.

(5) The written agreement must, at a minimum, meet the statutory requirements of 20-9-235, MCA. The district or full service education cooperative and the county treasurer may include additional agreed-upon provisions. An agreement that contains an automatic renewal provision must be reviewed and reauthorized by the parties at least every five years.

AUTH: 20-9-102, 20-9-235, MCA

IMP: 20-9-235, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.10.613 to clarify the term of the written agreement between a school district or special education cooperative and the county treasurer under 20-9-235, MCA. Agreements that contain an automatic renewal provision should be reviewed and reauthorized by the school district or cooperative and the county treasurer on a periodic basis.

10.15.101 DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) "Absent" means the student is not present during organized public school instruction for which he is enrolled. An enrolled student who is receiving services at an offsite instructional setting on the official enrollment count date is not absent for purposes of the official counts submitted to the ~~state~~ Superintendent of Public Instruction unless the student does not attend his next scheduled organized public school instruction session, if any.

(2) through (11) remain the same.

(12) "Certified countywide elementary ANB" or "certified countywide high school ANB" means the number certified by OPI using the previous fiscal year countywide enrollment count. Joint districts prorate ANB to the located and nonlocated counties based on a percentage of spring enrollment from each county. Certified countywide ANB ~~it~~ is used to calculate mill values per ANB.

(13) through (26)(a) remain the same.

(b) a high school student who is a resident of the district and is receiving educational or vocational services in a Montana job corps program or the Montana Youth Challenge program under an interlocal agreement with the district as provided in 20-9-707, MCA;

(c) through (58) remain the same.

(59) "Superintendent" means the ~~state~~ Superintendent of Public Instruction.

(60) through (63) remain the same.

AUTH: 20-9-102, MCA

IMP: Title 20, ch. 9, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.15.101(12) to clarify how joint districts prorate ANB to the located and nonlocated counties. This amendment provides clarity and consistency for the calculation of county mill values per ANB as provided in ARM 10.21.102B. This rule is also being amended to implement the addition of a student enrolled in an eligible Montana Youth Challenge program to the definition of "enrolled student" for purposes of ANB funding under 20-9-311, MCA (SB 216, 2009 Legislative Session).

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) remains the same.

(2) The ~~state~~ Superintendent of Public Instruction shall determine the appropriate budget units for the ANB calculation and the BASE funding program for the district. The enrollment generated by a budget unit that is subsequently closed shall be added to the enrollment of another budget unit of the district for the first year after the closing of a budget unit if students are enrolled in the other budget unit.

(3) through (7) remain the same.

(a) a student who has reached the age of five on or before September 10 and is enrolled in a kindergarten program but is receiving services in a preschool environment pursuant to an individualized education program (IEP), is included in eligibility for purposes of ANB.

(a) and (b) remain the same but are renumbered (b) and (c).

(i) through (16) remain the same.

AUTH: 20-9-102, 20-9-346, 20-9-369, MCA

IMP: 20-1-301, 20-1-302, 20-1-304, 20-7-117, 20-9-311, 20-9-313, 20-9-314, 20-9-805, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.20.102 to clarify the circumstances under which a school district providing services to a preschool student pursuant to an IEP would be eligible for ANB funding under 20-9-311, MCA. A student in this situation should be enrolled in kindergarten at age five to ensure the school district is involved in the student's transition into its elementary system. School districts are entitled to state ANB funding for students enrolled in kindergarten through 12th grade.

10.20.106 STUDENTS PLACED IN EDUCATION PROGRAMS (1) The ~~State~~ Superintendent of Public Instruction recognizes that a Montana state agency or court may place a Montana student in a facility located within a school district that is not the student's district of residence. The ~~State~~ Superintendent of Public Instruction also recognizes that a district may contract with a private or public entity for the provision of a Montana resident student's education. If a district contracts and pays for the provision of a Montana student's education, the district may include that student in the district's enrollment count for purposes of calculating ANB,

provided:

(a) through (5) remain the same.

(a) a student who is placed in a private, nonsectarian day treatment program. Districts may use the district tuition fund to pay for educational services and may claim an ANB reimbursement payment under provisions of 20-5-324, MCA, and ARM ~~10.10.106~~ 10.10.301D for a student placed under an IEP in a day treatment program at a private, nonsectarian school located in or outside the child's district of residence; and

(b) remains the same.

AUTH: 20-7-419, MCA

IMP: 20-5-321, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.20.106 to correct the reference to administrative rule.

10.21.101C NOTIFICATION OF MILL VALUES PER ANB AND GTB

RATIOS (1) By March 1 the ~~State~~ Superintendent of Public Instruction will calculate preliminary state, county, and district mill values per ANB, facility guaranteed mill values per ANB, and preliminary state and district GTB ratios.

(2) By March 1 the ~~State~~ Superintendent of Public Instruction will send:

(a) through (4) remain the same.

(5) By February 1, the Superintendent of Public Instruction must be notified that a school district has elected to waive its right to receive its portion of protested taxes as provided in 15-1-409, MCA. The Department of Revenue (DOR) determines the total taxable value of the property in the school district that is not subject to a tax protest and notifies the Superintendent of Public Instruction by February 1 of the taxable value. The Superintendent of Public Instruction will calculate the school district's GTB ratio in ARM 10.21.101D using the new taxable value.

(5) remains the same but is renumbered (6).

(a) If the alleged error involves ANB data, GTB mill values, or GTB ratios, the ~~state~~ Superintendent of Public Instruction must receive notification establishing the error. The ~~State~~ Superintendent of Public Instruction will review the calculation and make necessary corrections to final district and county mill values per ANB and final district ratios. For statewide ratios and mill values per ANB, notification of error must be received prior to May 1 and will only be taken into consideration in cases of significant impact.

(b) If the alleged error involves taxable valuation, the district must request a correction from the DOR. The DOR will make any necessary correction and notify the ~~State~~ Superintendent of Public Instruction of the correction. The ~~State~~ Superintendent of Public Instruction will review the calculation and make necessary corrections to final district and county mill values per ANB and final district ratios. For statewide ratios and mill values per ANB, notification of error must be received prior to May 1 and will only be taken into consideration in cases of significant statewide impact.

~~(6)~~ (7) By April 25 the State Superintendent of Public Instruction must be notified if two or more districts intend to consolidate or annex in the ensuing fiscal year. The State Superintendent of Public Instruction will combine the districts' ANB, GTBA budget area, and taxable values to calculate the combined district's final debt service GTB mill value per ANB and weighted GTB subsidy per mill(s) in the BASE budget levy.

~~(7)~~ (8) If material differences in statewide ratios are documented or legislative changes occur regarding the calculation, the State Superintendent of Public Instruction will recalculate and notify all districts and counties by May 1 of the final state, county, and district mill values per ANB, final facility guaranteed mill values, final district general fund weighted GTB subsidy per mill(s) in the BASE budget levy, and final state GTB ratios.

AUTH: 20-9-369, MCA

IMP: 15-1-409, 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.21.101C to implement the provisions of 15-1-409, MCA (HB 562, 2009 Legislative Session) by establishing a due date for information needed to calculate a school district's GTB ratio and to comply with reporting requirements as required by 20-9-369, MCA.

10.30.405 K-12 DISTRICT ISSUANCE OF BONDS (1) A K-12 district may become indebted by the issuance of bonds, including all outstanding bonds and registered warrants assumed at the time of formation of the K-12 district, up to ~~90%~~ 100% of the taxable value of the property subject to taxation, pursuant to 20-9-406, MCA. The bonded indebtedness may not exceed ~~45%~~ 50% of the taxable value for elementary program purposes and ~~45%~~ 50% for high school purposes. The exception to this limit is an elementary or high school that qualifies for guaranteed tax base aid under provisions of 20-9-367, MCA. For these K-12 districts, the maximum indebtedness is ~~45%~~ 50% of the sum of the statewide mill value per elementary ANB times 1000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1000 times the high school ANB of the district.

(a) through (b)(iii) remain the same.

(iv) taxable value of \_\_\_\_\_  
district or ~~45%~~ 50% of the statewide  
mill value per ANB times 1000  
times the ANB of the district

(v) remains the same.

~~(c) The total amount of a building reserve proposition for a K-12 district, for the purposes authorized in 20-9-502, MCA, when added to the existing indebtedness of the district, may not exceed the limitations set forth in 20-9-506, MCA.~~

AUTH: 20-3-106, MCA

IMP: 20-9-406, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.30.405 to implement the provisions of 20-9-406, MCA (HB 513, 2009 Legislative Session).

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Beverly Marlow, Office of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail [bemarlow@mt.gov](mailto:bemarlow@mt.gov), and must be received no later than 5:00 p.m., August 26, 2010.

5. Ann Gilkey, Chief Legal Counsel for the Superintendent of Public Instruction has been designated to preside over and conduct this hearing.

6. The OPI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by e-mail on October 13, 2009 and by first-class mail on July 2, 2010.

/s/ Ann Gilkey  
Ann Gilkey  
Rule Reviewer

/s/ Denise Juneau  
Denise Juneau  
Superintendent of Public Instruction

Certified to the Secretary of State July 19, 2010.